

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES L. TOLBERT,

Plaintiff,

v.

Case No. 11-12059

Honorable David M. Lawson

Magistrate Judge Michael J. Hluchaniuk

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
GRANTING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT,
DENYING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT,
AND REMANDING FOR FURTHER PROCEEDINGS**

The plaintiff filed the present action on May 10, 2011 seeking review of the Commissioner's decision denying the plaintiff's application for a period of disability and disability insurance benefits under Title II. On the same date, the case was referred to United States Magistrate Judge Michael J. Hluchaniuk pursuant to 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1(b)(3). Thereafter, the plaintiff filed a motion for summary judgment to reverse the decision of the Commissioner and the defendant filed a motion for summary judgment to affirm the decision of the Commissioner. Presently before the Court is the report issued on August 27, 2012 by Magistrate Judge Michael J. Hluchaniuk pursuant to 28 U.S.C. § 636(b), recommending that the plaintiff's motion for summary judgment be granted, the defendant's motion for summary judgment be denied, and the case be remanded to the agency for further proceedings pursuant to 42 U.S.C. § 405(g). Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed thus far. The parties' failure to file objections to the report and recommendation waives any

further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt. #15] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's motion for summary judgment [dkt. #8] is **GRANTED** and the defendant's motion for summary judgment [dkt. #13] is **DENIED**.

It is further **ORDERED** that the case is **REMANDED** to the agency for further proceedings pursuant to 42 U.S.C. § 405(g).

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 18, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 18, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL